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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5755 OF 2007

M/s. Chaudhary Transport ... Petitioner
Versus
The Deputy Commissioner of Sales Tax and Ors. ... Respondents

Mr. R.D. Suryawanshi for Petitioner.

Mr. Prasad Das i/by M/s. Goenka Law Associates for Respondent No. 3.

Mr. V.A. Sampat, A.G.P. for Respondent No.1.

Mr. M.D. Siodia i/by M/s. Rustomji & Ginwala for R. No. 2.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: OCTOBER 31, 2007

P.C.

. Rule. Heard forthwith.

. The Petitioner by the present Petition had challenged the action of the Respondents in attaching the assets for the dues of Respondent No. 4. These dues were for the period between 1st March, 2001 and 31st March, 2003 in the sum of Rs.1,99,73,616/-. The Respondent No. 4 was partner of the Petitioner firm upto 31.3.2004. He has subsequently resigned and in his place his wife has been inducted as partner. The share in the profits which the Respondent No. 4 had, is now with his wife. Be that as it may; considering that the demand is for the period between 1.3.2001 and 31.3.2003 and as during the relevant

time, Respondent No. 4 was partner of Petitioner, it was open to Respondent No. 1 to attach atleast the interest of Respondent No. 4 in the Petitioner firm.

. When the matter came up for hearing on behalf of the Partnership. their learned counsel had pointed out that the book value of Respondent No. 4 based on 20% interest in the assets would be Rs.4,15,150/-. The Respondent No. 1 however, wanted a valuer to be appointed. Pursuant to that this court appointed a valuer. Based on the valuation done by the Valuer and the interest which the Respondent No.4 would have in the partnership that works out to Rs.2,77,000/-. In the instant case, we are however, considering movable assets and as such there is all probability that the assets have depreciated. The interest of Respondent Revenue, however, will have to be protected.

. Pursuant to demand made by Respondent No. 1 on Respondent Nos. 2 and 3, The Respondent No. 1 has already received sum of Rs.7,01,216/- from Respondent No. 2. It is also the case of Respondent No. 1 that the Respondent No. 3 has paid in their hands a sum of Rs.7,33,661/-.

. Considering what we have set out and as Respondent No. 1 have in their hands money of the Petitioners, it will be open to Respondent No. 1 to retain the said amount of

Rs.4,15,150/- and adjust the same against the dues of Respondent No. 4. The balance amounts received from Respondent No. 2 and 3 be returned to the Petitioner within eight weeks from today. The sum to be received by the Petitioners from Respondent No. 1 would be adjusted by Respondent Nos. 2 and 3 towards the amount which Respondent No.2 and 3 were bound to pay to the Petitioners herein as per their books.

. In the light of the above, the demand made on Respondent No. 2 and 3 by Respondent No. 1 in so far as Petitioners are concerned, is quashed and set aside. It will be open to Respondent No. 1 to proceed against Respondent No. 4 in respect of whatever other assets he may be having. Consequently the order of provisional attachment dated 21.12.2004 also stands set aside. The balance of the amounts which the Respondent Nos. 2 and 3 are owing to the Petitioners should be paid forthwith.

. In so far as other prayers are concerned, the learned counsel at this stage does not press the same but seeks liberty to raise the said issue in the event he is aggrieved by any action or inaction made hereinafter in respect of those prayers. Liberty as prayed for is accordingly granted.

. Rule made absolute accordingly. No order as to costs.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**